

Report to COUNCIL

Review of Constitution

Portfolio Holder: Councillor McMahon, Leader of the Council

Officer Contact: Paul Entwistle, Director of Legal Services

20th May 2015

1. BACKGROUND

There is a constitutional requirement to review the Council's Constitution on an annual basis. Discussions have taken place with Leaders of the two largest groups on the areas for consideration in the review.

2. COUNCIL PROCEDURE RULES

2.1 Leader and Cabinet Question Time – it has been proposed that the Leader of the Main Opposition Group be constitutionally entitled to ask two questions (as opposed to the current three) and the third question be allocated to a Leader of one of the minority opposition groups. Whichever Leader of the minority opposition group gives first notice of the question is then entitled to ask a question. It is also proposed that, after the Leaders' question, questions are taken by the Mayor in an order which reflects the political balance of the Council.

2.2 Ward questions – it has been proposed that the Mayor should call members to ask questions on a politically balanced basis as opposed to alternating between groups. The rationale for this proposed amendment is that the current arrangements disadvantage members of a larger political group in being able to ask Ward questions. In order to allow sufficient time for Ward questions, it is proposed to amend the timings of Open Council to allow 25 minutes for Ward questions and reducing Public Questions to 15 minutes.

2.3 Time for submission of public questions. The current deadline is that public questions may be submitted until 6:00 p.m. on the day of the meeting. This does not give sufficient time for members to be able to ascertain information to enable responses to be given and it is proposed that the deadline is moved to 5:00 p.m. on the day of the meeting.

2.4 Observations on responses at Leader and Cabinet Question Time, Cabinet minutes section and joint authority/partnership minutes – it has been proposed that the observations on responses section is removed. This was previously introduced to be reviewed after a period. In practice, the ability of members you make observations have been seldom exercised.

3. RESPONSIBILITY FOR FUNCTIONS

a) There is a requirement to update the delegations to Individual Cabinet Members in line with previous resolutions.

Scheme of Delegation to Members

The Cabinet makes decisions in relation to the following:

All matters reserved to Cabinet.

1. All matters reserved to cabinet.
2. Any matters delegated to an individual Cabinet members where, in particular case, the Leader directs that the decision should be dealt with by the Cabinet.
3. Any matter which is delegated to a Cabinet Member by Cabinet and that Member decides to refer the matter back to the Cabinet.
4. Any matter which overlaps the portfolios of two or more Members and, in the opinion of the Leader, is more appropriately dealt with by the Cabinet.
5. Any matter which, under the Council's Financial Procedure Rules, Contract Procedure Rules or other Council Rules, requires the approval of the Cabinet.

General Cabinet Member Delegations

There are occasions when matters affect more than one Cabinet Member portfolio; on such occasions the Leader will take the decision, subject to point 4 above. All Cabinet Members have responsibility for taking commissioning and delivery decisions in relation to their portfolio within the existing budget and policy framework.

In particular they have the following powers:

1. To make key decisions in consultation with the relevant Executive Director.
2. Decisions leading to Contracts for the value of £40,000 up to £400,000 in consultation with the relevant Executive Director.

b) The Terms of Reference for Cabinet can be amended to remove the reference to “approving significant proposed amendments to the overall departmental structure of the Council” given the powers available to the Selection Committee.

4. TRAFFIC REGULATION ORDER PANEL

Under the Local Authorities (Functions and Responsibilities) (England) Regulations, there are a number of functions relating to public rights of way which cannot be dealt with by the Cabinet and they are currently delegated to Council officers. Some of the functions

concern the determination of rights of way and property rights and although any of them are rarely used, it is considered that it would be more appropriate for these functions to be dealt with at Member level, rather than being delegated to officers.

The Traffic Regulation Order Panel is responsible for considering and determining written representations to the introduction of Traffic Regulation Orders and Gating Orders and it is considered that the Panel would be the most appropriate body to deal with those functions relating to public rights of way which cannot be dealt with by the Cabinet and which are not suitable for officers to determine. As a result, the terms of reference of the Traffic Regulation Order Panel will need to be amended.

In addition, the power to introduce Gating Orders was repealed in October 2014 and replaced by the power to make Public Space Protection Orders under Chapter 2 of the Anti-Social Behaviour, Crime and Policing Act 2014. Therefore it is also necessary to amend the terms of reference of the Traffic Regulation Order Panel to reflect this legislative change.

Current Position

The current terms of reference of the Traffic Regulation Order Panel are set out below:

Traffic Regulation Panel

Terms of Reference

- a. The Panel shall consist of no less than three Members of the Council and be politically balanced.
- b. The Panel shall consider and determine written representatives to the introduction of Traffic Regulation Orders and Gating Orders.
- c. The Panel's decision shall be recorded on the Council's Electronic Decision Recording System.
- d. The decision of the Panel will be final and the Executive Director, Neighbourhoods will act in accordance with the decision.

It is proposed to change the terms of reference of the Traffic Regulation Order Panel to:

Traffic Regulation Order Panel

Terms of Reference

- The Panel shall consist of no less than three Members of the Council.
- The Panel shall consider and determine written representations to the introduction of Traffic Regulation Orders and Public Space Protection Orders
- The Panel shall also be responsible for the functions listed below.
- The Panel's decision shall be recorded on the Council's Electronic Decision Recording System.
- The decision of the Panel will be final and the Executive Director, Co-operatives and Neighborhoods will act in accordance with the decision.

New Proposed Functions

1. Power to create footpath, bridleway or restricted byway by agreement (Section 25 Highways Act 1980)
2. Power to create footpaths, bridleways and restricted byways (Section 26 Highways Act 1980)

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3. Power to stop up footpaths, bridleways and restricted byways (Section 118 Highways Act 1980)
 4. Power to determine application for public path extinguishment order (Sections 118ZA and 118C(2) Highways Act 1980)
 5. Power to make a rail crossing extinguishment order (Section 118A Highways Act 1980)
 6. Power to make a special extinguishment order (Section 118B Highways Act 1980)
 7. Power to divert footpaths, bridleways and restricted byways (Section 119 Highways Act 1980)
 8. Power to make a public path diversion order (Sections 119ZA and 119C(4) Highways Act 1980)
 9. Power to make a rail crossing diversion order (Section 119A Highways Act 1980)
 10. Power to make a special diversion order (Section 119B Highways Act 1980)
 11. Power to require applicant for order to enter into agreement (Section 119C(3) Highways Act 1980)
 12. Power to make an SSSI diversion order (Section 119D Highways Act 1980)
 13. Power to decline to determine certain applications (Section 121C Highways Act 1980)
 14. Power to apply for variation of order under section 130B Highways Act 1980 (Section 130B(7) Highways Act 1980)
 15. Power to extinguish certain public rights of way (Section 32 Acquisition of Land Act 1981)
 16. Power to make a modification order (Section 53 Wildlife and Countryside Act 1981)
 17. Power to include modifications in other orders (Section 53A Wildlife and Countryside Act 1981)
 18. Power to prepare map and statement by way of consolidation of definitive map and statement (Section 57A Wildlife and Countryside Act 1981)
 19. Power to designate footpath as cycle track (Section 3 Cycle Tracks Act 1984)
 20. Power to extinguish public right of way over land acquired for clearance (Section 294 Housing Act 1981)
 21. Power to authorise stopping-up or diversion of footpath bridleway or restricted byway (Section 257 Town and Country Planning Act 1990)
 22. Power to extinguish public rights of way over land held for planning purposes (Section 258 Town and Country Planning Act 1990)
 23. Power to enter into agreements with respect to means of access (Section 35 Countryside and Rights of Way Act 2000)
 24. Power to provide access in absence of agreement (Section 37 Countryside and Rights of Way Act 2000)

5. OFFICER PROCEDURE RULES

The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 amend the arrangements in relation to the dismissal and disciplinary action in relation to Statutory officers of the Council.

The regulations simplify and localise the disciplinary process for senior Council staff, ie. Head of Paid Service, Monitoring Officer and Chief Finance Officer. The finalised Regulations now provide that the final decision to dismiss must be taken by full Council

who must consider advice, views or recommendations from an Independent Panel, the conclusion of any investigation into the proposed dismissal and any representations from the relevant officer.

The regulations come into force on 11th May 2015 and must be implemented no later than the first ordinary meeting of the authority following this date.

6. OFFICER SCHEME OF DELEGATION

1. The following paragraph be added to the powers of the Executive Director, Co-operatives and Neighbourhoods.

a. Investigation and prosecution of all offences relating to private sector housing rental and landlord and tenant relationships including but not limited to –

Protection from Eviction Act 1977, Accommodation Agencies Act 1953, Landlord and Tenant Act 1985, Landlord and Tenant Act 1987, Rent Act 1977, Housing Act 1988 and Prevention of Social Housing Fraud Act 2013.

b. Housing authority functions.

2. The delegations to the Chief Executive should include the power to delegate any emergency decisions to the Executive Director appointed to deputise at any one time.

7. FINANCIAL PROCEDURE RULES

The Interim Director of Finance has reviewed the Financial Procedure Rules and , largely arising from organisational changes, proposes amendments which are highlighted in red on Appendix A to this report.

8. RECOMMENDATIONS

8.1 Council are requested to consider the proposed amendments to the Constitution .

8.2 Council are asked to re-affirm the Constitution.

9. KEY DECISION

No.

10. BACKGROUND PAPERS

The following is a list of background papers which this report is based in accordance with the requirement of Section 100 (1) of the Local Government Act 1972. It does not include documents which would disclose except or confidential information as defined by the Act:-

File: - The Constitution File

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